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September 9, 2021

**VIA ECF**

Hon. John M. Vazquez, U.S.D.J.  
United States District Court  
for the District of New Jersey  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07101

**Re: Case No. 20-cv-14243, City of Hoboken v. Exxon Mobil, et al.**

Dear Judge Vazquez:

Defendants write to briefly respond to the Plaintiff's letter in opposition to Defendants' emergency request to stay the Court's remand order to allow Defendants to file a formal motion to stay pending appeal to the Third Circuit.

*First*, based on Defendants' discussions with the Clerk's office, Defendants understand that as a result on their initial letter, the remand order has *not* been transmitted to the Clerk of the Superior Court of New Jersey.<sup>1</sup> In any event, and contrary to Plaintiff's suggestion, a transmittal letter does not divest this Court of jurisdiction to enter a stay because Defendants have a right of direct appeal. As the Seventh Circuit explained: "Because the remand order in this case is reviewable [on appeal under the federal officer removal statute], the certification of the remand order imposes no independent bar on either our jurisdiction or the district court's jurisdiction. In reaching this conclusion, we join the three other circuits that have considered this issue." *Hammer v. U.S. Dep't of Health & Hum. Servs.*, 905 F.3d 517, 525 (7th Cir. 2018) (citing *Shapiro v. Logistec USA, Inc.*, 412 F.3d 307, 312 (2d Cir. 2005); *Hudson United Bank v. LiTenda Mortg. Corp.*, 142 F.3d 151, 159 (3d Cir. 1998); *In re Digicon Marine, Inc.*, 966 F.2d 158, 160-61 (5th Cir. 1992)).

<sup>1</sup> This letter is submitted subject to, and without waiver of, any defense, affirmative defense, or objection, including personal jurisdiction.

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District courts are in accord. In *Manier v. Medtech Production, Inc.*, for example, the court rejected Plaintiff's argument that it was "without jurisdiction to entertain the instant motion [to stay] since it certified and mailed a copy of its remand order to state court." 29 F. Supp. 3d 1284, 1286 (S.D. Cal. 2014). In that case the defendant, like Defendants here, removed the case under the Class Action Fairness Act ("CAFA"). The court held that it "is appropriate for the Court to address a motion to stay pending appeal of a remand order as Congress has specifically allowed the remand order to be appealable." *Id.* at 1287 (citing *Morgan v. Gay*, 471 F.3d 469, 471 (3d Cir. 2006)); *see also Raskas v. Johnson & Johnson*, 2013 WL 1818133, at \*1 (E.D. Mo. Apr. 29, 2013) ("To hold that a district court lacks the limited jurisdiction to stay its remand order in a CAFA case would render the statutory right to appeal a CAFA remand order hollow."); *Coffey v. Freeport-McMoran Copper & Gold Inc.*, 2009 WL 10672022, at \*1-2 (W.D. Okla. May 8, 2009) (holding "that the mailing of a remand order to state court does not divest the district court of jurisdiction when the remand was pursuant to" CAFA because a defendant may seek review of that order in the court of appeals). The same is even more true here where Defendants removed not only under CAFA, but also the federal officer removal statute, which provides an additional and separate ground for appeal. 28 U.S.C. § 1447(d).

*Second*, Defendants requested a temporary stay to allow them an opportunity to file a formal motion to stay pending their forthcoming appeal to the Third Circuit. As the Court correctly noted in its remand order, in *Baltimore III* the Supreme Court "determined that when a matter is removed pursuant to Sections 1442 or 1443, an appellate court may review the entire remand order on appeal even if the remand order addresses grounds for removal outside of Sections 1442 and 1443." ECF 121 at 6. This means that, *for the first time* in a climate change-related case, the Third Circuit will have the opportunity to review not just any, but all grounds for removal asserted by Defendants. This Court also correctly observed that no appeal was "pending before the Third Circuit" at this time, and thus there was no reason to delay its ruling on Plaintiff's remand motion. *Id.* at 7. The same logic counsels in favor of granting a stay now because an appeal will soon be before the Third Circuit in this very case. The Third Circuit will have the opportunity to review each removal ground—and each ground will be a matter of first impression for the Third Circuit, since it has not yet addressed any of these grounds in a climate change lawsuit.

It is well established that questions of first impression raised in an appeal warrant a stay. *See, e.g., Nw. Airlines v. E.E.O.C.*, 1980 WL 4650, at \*1 (D.C. Cir. Nov. 10, 1980) ("The stay is ordered in light of the questions of first impression raised by this appeal."); *Maxcrest Ltd. v. United States*, 2016 WL 6599463, at \*2 (N.D. Cal. Nov. 7, 2016) (granting stay because defendant made a "sufficient showing that its appeal raises a legal question of first impression"); *Village Green I, GP v. Fed. Nat'l Mortg. Ass'n*, 2014 WL 2589444, at \*4 (W.D. Tenn. June 10, 2014) (granting stay because "questions of law are issues of first impression in this Circuit."); *Moutevelis v. United States*, 564 F. Supp. 1554, 1556 (M.D. Pa. 1983), *aff'd*, 727 F.2d 313 (3d Cir. 1984) (granting a stay pending appeal where district court recognized its "opinion ... may well involve issues of first impression in this Circuit"). In their proposed order Defendants suggested that if the Court were to ultimately deny their formal motion to stay, that it keep a stay in place to enable Defendants to seek a stay from the Third Circuit. It makes eminent good sense to maintain a stay until Defendants have exhausted their appellate remedies. At a minimum,

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Defendants respectfully request a brief stay to permit them to file, and for this Court to consider, a formal motion to stay pending appeal. As noted in Defendants initial letter, Defendants will file that motion within 10 days or as soon as directed by the Court.

*Third*, Plaintiff's suggestion that it cannot agree to a short stay because it is recovering from the aftermath of Tropical Storms Henri and Ida is misguided and has been rejected by other courts. Through this action, Plaintiff principally seeks to recover *money damages* for its alleged injuries, which can be awarded at any time. "It is well settled that a purely economic injury is compensable in money damages and therefore can never constitute irreparable harm." *Telebrands Corp. v. Grace Mfg.*, 2010 WL 4929312, at \*4 (D.N.J. Nov. 30, 2010) (citing *Frank's GMC Truck Center v. Gen. Motors Corp.*, 847 F.2d 100, 102–03 (3d Cir. 1988)). Indeed, as the District of Maryland recently noted in granting a stay of proceedings in a similar climate change-related case, "the outcome of this lawsuit cannot turn back the clock on the atmospheric and ecological processes that defendants' activities have allegedly helped set in motion. The urgency of the threat of climate change writ large is distinct from plaintiff's interest in a speedy determination of federal jurisdiction in this suit." *City of Annapolis v. BP P.L.C.*, 2021 WL 2000469, at \*4 (May 19, 2021).

The same is true here. In fact, Plaintiff will benefit from a stay in certain respects because, with a stay in place, Plaintiff will avoid the same risk of harm from potentially inconsistent outcomes in remanded state court proceedings as Defendants. Similarly, a stay would conserve Plaintiff's resources—financial and otherwise—by allowing it to litigate Defendants' appeal without being saddled with simultaneous state court litigation. As the District of Minnesota recently explained in granting a stay: "[T]he public also has an interest in conserving resources by avoiding unnecessary or duplicative litigation, particularly where, as here, the Eighth Circuit will be addressing for the first time whether the state court has jurisdiction to resolve the claims and redress the injuries alleged at all." *Minnesota v. Am. Petroleum Inst.*, 2021 WL 3711072, at \*4 (D. Minn. Aug. 20, 2021).

In sum, Defendants seek a short stay to preserve the *status quo* and allow them a chance to appeal the Court's remand order to the Third Circuit and file a formal motion to stay with this Court pending that appeal.

Respectfully submitted,

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